

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

VINNIE J. McDONALD,)	
Plaintiff,)	2:05cv901
)	Electronic Filing
v.)	
)	Judge Cercone
OFFICER KEVIN B. FOLTZ and)	Magistrate Judge Lenihan
ROCHESTER TOWNSHIP,)	
Defendants.)	

MEMORANDUM ORDER

The above captioned complaint was filed on June 29, 2005, and was referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636 (b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation (Document No. 17), filed on December 21, 2006, recommended that Defendants' Motion for Summary Judgment (Document No. 10) be granted insofar as it relates to Plaintiff's claims filed pursuant to the Fourteenth Amendment Substantive Due Process Clause, the Equal Protection Clause, First Amendment Retaliation claim, Fourth Amendment Malicious Prosecution claim, and Municipal Liability. It also recommended that Defendants' Motion for Summary Judgment be denied insofar as it relates to Plaintiff's claims of warrantless entry, excessive force, and false arrest filed pursuant to the Fourth Amendment. Service was made on all counsel of record. Defendants filed Objections to the Report and Recommendation on January 8, 2007; Plaintiff did not respond thereto. After review of the pleadings and documents in the case, together with the Report and Recommendation and the objections thereto, the following Order is entered:

AND NOW, this 8th day of March, 2007;

IT IS HEREBY ORDERED that Defendants' Motion for Summary Judgment (Document No. 10) is granted insofar as it relates to Plaintiff's claims filed pursuant to the

Fourteenth Amendment Substantive Due Process Clause, the Equal Protection Clause, First Amendment Retaliation claim, Fourth Amendment Malicious Prosecution claim, and Municipal Liability; and

IT IS FURTHER ORDERED that Defendants' Motion for Summary Judgment (Document No. 10) is denied insofar as it relates to Plaintiff's claims of warrantless entry, excessive force, and false arrest filed pursuant to the Fourth Amendment.

The Report and Recommendation (Document No. 17) of Magistrate Judge Lenihan, dated December 21, 2006, is adopted as the Opinion of the Court.

Defendants' objections are overruled. The magistrate judge correctly applied the standards of law governing the various aspects of the claims and defenses placed at issue by defendants' motion. Defendants' attempt to have the factual record construed in the manner most favorable to Officer Foltz is misplaced at this juncture. And as aptly observed by the magistrate judge, this is so even in the context of qualified immunity. See Report and Recommendation (Doc. No. 17) at 11 (quoting Saucier v. Katz, 533 U.S. 194, 201 (2001)).



David Stewart Cercone
United States District Judge

cc: Honorable Lisa Pupo Lenihan
United States Magistrate Judge

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